

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

## PCT

To:  
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FILE No.	

WRITTEN OPINION  
(PCT Rule 66)

Date of mailing (day/month/year) 01.09.2004			
Applicant's or agent's file reference SJW5770 WO		REPLY DUE <b>within 3 month(s)</b> from the above date of mailing	
International application No. PCT/EP 03/10337	International filing date (day/month/year) 17.09.2003	Priority date (day/month/year) 19.09.2002	
International Patent Classification (IPC) or both national classification and IPC A23L1/305			
Applicant CERESTAR HOLDING B.V. et al.			


1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6.

**If no reply is filed,** the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 19.01.2005

Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer: Hedegaard, A Formalities officer (incl. extension of time limits) Longo, E Telephone No. +49 89 2399-8141
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**I. Basis of the opinion**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

**Description, Pages**

1-13 as originally filed

**Claims, Numbers**

1-15 received on 16.04.2004 with letter of 16.04.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

## WRITTEN OPINION

International application No. PCT/EP 03/10337

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Novelty (N)	Claims	14
Inventive step (IS)	Claims	1-15
Industrial applicability (IA)	Claims	

### 2. Citations and explanations

**see separate sheet**

**Re Section V**

**Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:

D1: EP-A-0 875 155

D2: WO 00/48474 A

D3: GB-A-1 519 164

D4: EP-A-0 803 198

2. The subject-matter of claim 14 is not novel (Art. 33(2) PCT) over D1, said document disclosing (see example 1) a composition comprising 35 w/w% wheat protein hydrolysate, 58 w/w% maltodextrin and 6 w/w% amino acids. It is here pointed out that an intended use (calf milk replacer) cannot render novel a composition already known in the art (D1); Guidelines C-IV, 7.6 and C-III, 4.8.
3. The subject-matter of claim 1 is novel (Art. 33(2) PCT) since the feature "DE of 3 to 10" has not been disclosed in D1.
4. D2, which represents the closest prior art, discloses (see e.g. D2, comp. 3b in Table I) a calf milk replacer from which the subject-matter of present claim 1 only differs in that it comprises more maltodextrin (25 to 70% instead of 14%) and in that it specifies a "DE of 3 to 10". However, these amendments do not appear to be accompanied by any non-obvious effect and can be carried out by the person skilled in the art without having to resort to inventive skill. The more so since it is known from D3 (claim 21) and D4 (claim 5) to include up to 60% / 70% of carbohydrate in similar milk substitute feed compositions. Therefore, the subject-matter of claim 1 is not considered to involve an inventive step (Art. 33(3) PCT).
5. The same as above under item 4 applies mutatis mutandis to independent claims 11 and 14.

6. The subject-matter of claim 7 differs from the prior art documents (D1 and D2) in specifying the order of blending the ingredients. However, this appears to be well within the skill of the art and cannot form basis for an inventive step (Art. 33(3) PCT).
7. The applicant's attention is drawn to Rule 13.1 PCT requiring a single general inventive concept. In this respect it is pointed out that the distinguishing feature of claim 1, namely "a DE of 3 to 10" is not to be found in any of the other independent claims.
8. Having regard to the disclosures of D1-D4, dependent claims 2-6, 8-10, 12-13 and 15 do not appear to contain new and/or inventive features and are only allowable when related to an independent claim which fulfils the requirements of the PCT.